



Docket No.: KCC-15,611.1

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellants: Cynthia H. NORDNESS, et al.

Serial No.: 10/642,850

Filing Date: 18 August 2003

Title: PERMEABLE, CLOSE TO THE BODY
LINER FOR SWIMWEAR

Customer No. 35844

Confirmation No. 4040

Group No. 3761

Examiner: C. Anderson

APPEAL BRIEF UNDER 37 CFR 41.37

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Appellants herewith file this Appeal Brief in the above-identified case, pursuant to their Notice of Appeal filed 10 July 2007.

1. REAL PARTY IN INTEREST

The real party in interest is Kimberly-Clark Worldwide, Inc., the assignee of the present application (as recorded at reel 012720, frame 0751).

I hereby certify that this correspondence (along with any paper referred to as being attached or enclosed) is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on

31 August 2007

31 Aug 2007
Date

[Signature]
Signature

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2. RELATED APPEALS AND INTERFERENCES

Appellants are not aware of any related appeals or interferences with regard to the present application.

3. STATUS OF CLAIMS

Claims 1-7, 9-20, 22-30, 32-38 and 40 are pending in the application. The present Appeal is directed to Claims 1-7, 9-20, 22-30, 32-38 and 40, which were finally rejected in an Office Action mailed 22 March 2007.

4. STATUS OF AMENDMENTS

No amendment to the claims was filed subsequent to the most recent final rejection.

5. SUMMARY OF CLAIMED SUBJECT MATTER

The invention defined by independent Claim 1 is directed to an absorbent garment 120 (Page 21, lines 12-17; FIGS. 6A-6B). The absorbent garment 120 comprises a composite structure 140 having end edges 152 and side edges 154; the end edges 152 and the side edges 154 define a perimeter and a central region 156 within the perimeter of the composite structure 140 (Page 22, lines 11-20; FIGS. 6A 6B). The composite structure 140 includes a liquid-permeable body side liner 148, an outer cover 146, and an absorbent assembly 150 between the body side liner 148 and the outer cover 146 (Page 22, lines 11-20; FIG. 6B). The composite structure 140 includes a continuous mesh liner 190 attached to the composite structure 140 (Page 23, lines 1-12; FIGS. 6B-10). The mesh liner 190 is adjacent to the body side liner 148 with no intervening layers between the mesh liner 190 and the body side liner 148, and the mesh liner 190 is permeable to sand (Page 24, lines 3-12; FIGS. 7A-7B and 9A-9B). The mesh liner 190 is coextensive with the composite structure 140 and is attached to the composite structure 140 along the perimeter of the composite structure 140 and unattached to the composite structure 140 in the central region 156 of the composite structure 140 (Page 23, lines 1-12; FIGS. 6B-10).

The invention defined by independent Claim 20 is directed to an absorbent garment 120 (Page 21, lines 12-17; FIGS. 6A-6B). The absorbent garment 120 comprises composite structure 140 having end edges 152 and side edges 154; the end edges 152 and the side edges 154 define a perimeter and a central region 156 within the perimeter of the composite structure 140 (Page 22, lines 11-20; FIG. 6B). The composite structure 140 includes a liquid-permeable body side liner 148, an outer cover 146, and an absorbent assembly 150 between the body side liner 148 and the outer cover 146 (Page 22, lines 11-20; FIG. 6B). The composite structure 140 includes a pair of containment flaps 162 attached to the liner side edges 154 (Page 26, lines 12-20; FIG. 10). A continuous mesh liner 190 attaches to the containment flaps 162, and a surface of the mesh liner 190 is positioned adjacent to a surface of the body side liner 148 with no intervening layers between the mesh liner 190 and the body side liner 148 other than the containment flaps 162 (Page 27, lines 12-17; FIGS. 10-11B). The mesh liner 190 is permeable to sand, and the mesh liner 190 is coextensive with the composite structure 140 and is attached to the composite structure 140 along the perimeter of the composite structure 140 and unattached to the composite structure 140 in the central region 156 of the composite structure 140 (Page 24, lines 3-12; FIGS. 7A-7B and 9A-9B).

The invention defined by independent Claim 27 is directed to an absorbent article 120 having a waist opening 158 and two leg openings 160 (Page 24, lines 13-20; FIG. 6A). The absorbent article 120 comprises a composite structure 140 including an absorbent assembly 150, a liquid-permeable layer 148 on a first side of the absorbent assembly 150, and a liquid-impermeable layer 146 on a second side of the absorbent assembly (Page 22, lines 11-20; FIGS. 6A-6B). The composite structure 140 having end edges 152 and side edges 154, the end edges 152 and the side edges 154 defines a perimeter and a central region 156 within the perimeter of the composite structure 140 (Page 22, lines 11-20; FIGS. 6A-6B). A continuous liquid-permeable liner 190 is adjacent to the liquid-permeable layer 148 on the first side of the absorbent assembly 150 with no intervening layers between the liquid-permeable liner 190 and the liquid-permeable layer 148 (Page 27, lines 12-17; FIGS. 10-11B). The liner 190 is permeable to sand, and the liquid-permeable liner 190 is coextensive with the composite structure 140 and is attached to the composite structure 140 along the perimeter of the

composite 140 and unattached to the composite structure 140 in the central region 156 of the composite structure 140 (Page 24, lines 3-12; FIGS. 7A-7B and 9A-B).

The invention defined by independent Claim 34 is directed to an absorbent article 120 having a waist opening 158 and two leg openings 160 (Page 24, lines 13-20; FIG. 6A). The absorbent article 120 comprises a composite structure 140 including an absorbent assembly 150, a liquid-permeable layer 148 on a first side of the absorbent assembly 150, and a liquid-impermeable layer 146 on a second side of the absorbent assembly 150 (Page 22, lines 11-20; FIGS. 6A-6B). The composite structure 150 having end edges 152 and side edges 154, the end edges 152 and the side edges 154 defines a perimeter and a central region 156 within the perimeter of the composite structure 140 (Page 22, lines 11-20; FIGS. 6A-6B). A pair of containment flaps 162 is attached to the composite structure 140 (Page 26, lines 12-20; FIG. 10). A continuous liquid-permeable liner 190 is attached to the containment flaps 162, and a surface of the liquid-permeable liner 190 is positioned adjacent to a surface of the liquid-permeable layer 148 with no intervening layers between the liquid-permeable liner 190 and the liquid-permeable layer 148 other than the containment flaps 162 (Page 27, lines 12-17; FIGS. 10-11B). The liner 190 is permeable to sand, and the liquid-permeable liner 190 is coextensive with the composite structure 140 and is attached to the composite structure 140 along the perimeter of the composite structure 140 and unattached to the composite structure 140 in the central region 156 of the composite structure 140 (Page 24, lines 3-12; FIGS. 7A-B and 9A-B).

Appellants have supplied the above claim summary in accordance with 37 CFR §41.37(c)(1)(v).

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

a) Claims 1-3, 7-12, 14-20, 22-29, 32-37 and 40 stand rejected under 35 U.S.C. §102(b) as being anticipated by *Allen et al.*, U.S. Patent 5,037,416.

b) Claim 4 and 6 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Allen et al.* in view of *Freeland*, U.S. Patent 4,990,147.

c) Claims 5, 30 and 38 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Allen et al.* in view of *Mizutani et al.*, U.S. Patent Application Publication 2002/0028624.

d) Claims 13 and 24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over *Allen et al.*

7. ARGUMENT

Appellants' claimed invention is directed to an absorbent garment particularly suitable for swim applications. The garment has a composite structure including an outer cover and a liquid-permeable body side liner with an absorbent assembly between the outer cover and the body side liner. The body side liner isolates the user's skin from the absorbent assembly.

Appellants' claimed invention also includes an additional structure made from a continuous mesh liner which is joined to the perimeter of the composite structure and is able to conform to the user's body while allowing sand to pass through the mesh liner since it is not attached to the body side liner in the central region. Passing sand from within the absorbent article and away from the skin reduces possible irritation. "Mesh" refers to a material that has the ability to allow fluid and particulates of a specific size range to filter through. The material has an open network that allows fluid or particulates of a specific size to pass through it. (Page 11, lines 13-17). The mesh liner also functions to hold or contain fecal matter since the mesh liner is substantially impermeable to larger bowel movement material (*See* page 5, lines 1-8).

a) CLAIMS 1-3, 7-12, 14-20, 22-29, 32-37 AND 40 ARE NOT ANTICIPATED BY *ALLEN ET AL.* UNDER 35 U.S.C. §102(b).

"A claim is anticipated **only** if each and **every element** as set forth in the claim is found, either expressly or inherently **described**, in a single prior art reference." (*Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), emphasis added). In this case, *Allen et al.* does not disclose Appellant's separate mesh liner.

Allen et al. discloses a diaper with an elastically extensible topsheet in combination with a backsheet and an absorbent core. (Column 1, lines 63-66). Page 2 of the Office Action states reference number 12 of *Allen et al.* corresponds to Appellants' continuous mesh liner. Appellants respectfully disagree. Reference number 12 clearly depicts a topsheet, functionally equivalent to Appellants' separate recited body side liner, not additional mesh liner.

The topsheet 12 **prevents contact** of the absorbent core 18 and liquids therein with the **skin** of the wearer. The topsheet 12 is liquid pervious, permitting liquids, particularly urine, to readily penetrate therethrough. As used herein, the term "topsheet" refers to any liquid pervious facing which contacts the **skin** of the wearer while the diaper 10 is worn and **prevents substantial contact** of the core 18 with the skin of the wearer. (Column 6, lines 14-22, emphasis added).

In Appellants' claimed invention, the function of isolating the absorbent core from the user's skin is performed by Appellants' body side liner, which is part of the composite structure and not the separate mesh liner (FIGS. 6A-11B). *Allen et al.* fails to disclose an additional separate continuous mesh liner or continuous liquid-permeable liner that is permeable to sand and attached to the composite structure along the perimeter and adjacent to the topsheet as required by Appellants' independent claims.

Put another way, Appellants explicitly claim both a mesh liner and a body side liner separable from each other to form an unattached space, such as shown by reference number 192 in FIGS. 7A-7B and 9A-9B. The mesh liner has openings sufficient to allow sand to pass while retaining large bowel movement matter against the skin. The body side liner is liquid pervious and allows, for example, urine to pass into the absorbent core. The body side liner separates the user's skin from the absorbent core in a manner not possible with the mesh liner since holes large enough to pass sand would allow contact through the mesh liner with the absorbent core and the user's skin. Contact with urine in the absorbent core is an undesirable skin irritant.

While in certain embodiments the topsheet of *Allen et al.* may include two layers 13a and 13b, these two layers are adhesively joined to form a "unitary laminate." (Column 9, lines 19-29). Consequently, neither of these layers is

equivalent to Appellants' recited continuous mesh liner or continuous liquid-permeable liner, particularly since Appellants' claims recite the continuous mesh or liquid-permeable liner be coextensive with the composite structure and attached to the composites structure along the perimeter of the composite structure and unattached to the composite structure in the central region of the composite structure. Instead, *Allen et al.* discloses a laminate 13 forming the topsheet 12, which is ***part of the composite structure.***

In other embodiments, the topsheet of *Allen et al.* includes an aperture or passageway 21 that is sized to allow solid fecal material to enter void space 28 between topsheet 12 and absorbent core 18. (See column 12, lines 33-50). This single-hole embodiment is completely opposite of Appellants' claimed continuous mesh liner. More particularly, Appellants' mesh liner holds fecal matter against the wearer's body while allowing sand to pass through the mesh liner to the body side liner, whereas the aperture or passageway 21 of *Allen et al.* allows fecal matter to pass directly to the absorbent core only at a single location.

In summary, *Allen et al.* and Appellants' inventions are structurally different since *Allen et al.* lacks an additional mesh liner. *Allen et al.* is also functionally different than Appellants' invention. *Allen et al.* seeks to isolate fecal material from the user by passing it through the single large aperture in the top sheet and trapping it in the void space. In contrast, Appellants' mesh layer is substantially impermeable to larger bowel movement material and holds the bowel movement in contact with the user so it does not exit the garment into the water and create a sanitation problem. (See page 2, lines 8-12).

Appellants respectfully submit that Claims 1, 20, 27, and 34 are not anticipated by *Allen et al.* Since Claims 2, 3, 7-12, and 14-19 depend from Claim 1; Claims 22-26 depend from Claim 20; Claims 28, 29, 32, and 33 depend from Claim 27; and Claims 35-37 and 40 depend from Claim 34, these claims are also not anticipated by *Allen et al.* For at least the reasons presented above, Appellants respectfully request the Board to overturn this rejection.

b) CLAIMS 4 AND 6 ARE NOT OBVIOUS OVER *ALLEN ET AL.* IN VIEW OF *FREELAND* UNDER 35 U.S.C. §103(a).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. (MPEP § 2143).

Regarding Claims 4 and 6, *Allen et al.* in view of *Freeland* does not teach or suggest Appellants' mesh liner. As discussed above regarding Claim 1, *Allen et al.* does not disclose a mesh liner.

Freeland fails to overcome the deficiencies of *Allen et al.* to arrive at Appellants' claimed absorbent garment having a continuous mesh liner. Like *Allen et al.*, *Freeland* discloses a garment having a backsheet, a topsheet and an absorbent core. (Column 1, lines 44-56) *Freeland* fails to teach or suggest an additional mesh liner to contain larger bowel movement material. The structure and function of *Freeland* with a single passageway is essentially the same as that of *Allen et al.*, which seeks to "obviate the aforementioned problems related to fecal material reposing against the skin of the wearer." (Column 1, lines 41-43).

One skilled in the art would not be motivated by or have an expectation of success based on the teaching of *Freeland* to modify *Allen et al.* to arrive at Appellants' claimed invention. More particularly, both *Allen et al.* and *Freeland* seek to separate fecal material from the skin of the user by inserting a hole in the topsheet, thereby allowing fecal matter to pass through the topsheet and onto an absorbent core. In contrast, Appellants' mesh liner holds the larger fecal material *against* the skin and does not allow it to exit into the surrounding water

Thus, *Allen et al.* and *Freeland* both *teach away* from Appellants' claimed invention.

None of the three requirements for a *prima facie* case of obviousness have been met by the cited references. Appellants respectfully submit that Claims 4 and 6 are not unpatentable over *Allen et al.* and *Freeland*, taken in proper combination. For

at least the reasons presented above, Appellants respectfully request the Board to overturn this rejection.

c) CLAIMS 5, 30 and 38 ARE NOT OBVIOUS OVER *ALLEN ET AL.* IN VIEW OF *MITZUTANI ET AL.* UNDER 35 U.S.C. §103(a).

Regarding Claims 5, 30, and 38, *Allen et al.* in view of *Mizutani et al.* does not teach or suggest Appellants' mesh liner. Claims 5, 30 and 38 depend from Claims 1, 27 and 34 and are patentable for at least the reasons discussed above.

Mizutani et al. fails to overcome the deficiencies of *Allen et al.* Neither *Allen et al.* nor *Mizutani et al.*, alone or in proper combination, teach or suggest a continuous mesh liner or continuous liquid-permeable liner, separate and distinct from a body side liner that is permeable to sand and attached to a composite structure adjacent to the body side liner.

Appellants respectfully submit that Claims 5, 30, and 38 are not unpatentable over *Allen et al.* in view of *Mizutani et al.* For at least the reasons presented above, Appellants respectfully request the Board to overturn this rejection.

d) CLAIMS 13 and 24 ARE NOT OBVIOUS OVER *ALLEN ET AL.* UNDER 35 U.S.C.-§103(a).

Regarding Claims 13 and 24, *Allen et al.* fails to teach or suggest Appellants' invention. Claims 13 and 24 depend from Claims 1 and 20 and are patentable for at least the reasons discussed above. More particularly, *Allen et al.* fails to disclose or suggest a continuous mesh liner or continuous liquid-permeable liner, separate and distinct from a body side liner that is permeable to sand and attached to a composite structure adjacent to the body side liner.

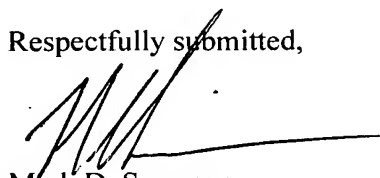
Appellants respectfully submit that Claims 13 and 24 are not unpatentable over *Allen et al.* For at least the reasons presented above, Appellants respectfully request the Board to overturn this rejection.

8. CONCLUSION

For the above reasons, Appellants respectfully submit that the rejections posed by the Examiner are improper as a matter of law and fact. Accordingly, Appellants respectfully request the Board to reverse the rejections of Claims 1-7, 9-20, 22-30, 32-38 and 40.

A check for the fee required by 37 CFR §41.37(a)(2) and 37 CFR §41.20(b)(2), updated pursuant to the Fiscal Year 2007 Fee Schedule, in the amount of \$500.00, is attached hereto. Please charge any additional amount owed or credit any overpayment to Deposit Account 19-3550.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Swanson', is written over a horizontal line.

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CLAIMS APPENDIX

1. An absorbent garment comprising:
a composite structure, the composite structure having end edges and side edges, the end edges and the side edges defining a perimeter and a central region within the perimeter of the composite structure;
the composite structure including a liquid-permeable body side liner, an outer cover, an absorbent assembly between the body side liner and the outer cover; and
a continuous mesh liner attached to the composite structure adjacent to the body side liner with no intervening layers between the mesh liner and the body side liner, wherein the mesh liner is permeable to sand, and the mesh liner is coextensive with the composite structure and is attached to the composite structure along the perimeter of the composite structure and unattached to the composite structure in the central region of the composite structure.
2. The absorbent garment of Claim 1, wherein the mesh liner comprises a nonwoven material.
3. The absorbent garment of Claim 2, wherein the nonwoven material comprises spunbond polypropylene.
4. The absorbent garment of Claim 2, wherein the nonwoven material comprises spunbond polyethylene.
5. The absorbent garment of Claim 2, wherein the nonwoven material comprises a spunbond/meltblown/spunbond web combination.
6. The absorbent garment of Claim 1, wherein the mesh liner comprises nylon.
7. The absorbent garment of Claim 1, wherein the mesh liner comprises at least two layers of material.

Claim 8 (Canceled)

9. The absorbent garment of Claim 1, wherein the mesh liner is permeable to liquid and substantially impermeable to bowel movement material.

10. The absorbent garment of Claim 1, wherein the mesh liner has a basis weight in a range from about 7 gsm to about 85 gsm.

11. The absorbent garment of Claim 1, wherein the mesh liner has a basis weight in a range from about 14 gsm to about 54 gsm.

12. The absorbent garment of Claim 1, wherein the mesh liner has a basis weight in a range from about 20 gsm to about 41 gsm.

13. The absorbent garment of Claim 1, wherein the mesh liner has a hole size in a range from about 147 to about 5810 microns.

14. The absorbent garment of Claim 1, wherein the mesh liner has a tensile strength of at least about 5 pounds of force per 4 inches of mesh liner.

15. The absorbent garment of Claim 1, wherein the mesh liner has a tensile strength of at least about 10 pounds of force per 4 inches of mesh liner.

16. The absorbent garment of Claim 1, wherein the mesh liner has a tensile strength of at least about 13 pounds of force per 4 inches of mesh liner.

17. The absorbent garment of Claim 1, wherein the mesh liner has a tensile strength of at least about 19 pounds of force per 4 inches of mesh liner.

18. The absorbent garment of Claim 1 further comprising at least one elastic strand attached to the mesh liner.

19. The absorbent garment of Claim 18, wherein the at least one elastic strand is attached under the mesh liner adjacent the body side liner.

20. An absorbent garment comprising:

a composite structure, the composite structure having end edges and side edges, the end edges and the side edges defining a perimeter and a central region within the perimeter of the composite structure;

the composite structure including a liquid-permeable body side liner, an outer cover, an absorbent assembly between the body side liner and the outer cover;

a pair of containment flaps attached to the liner side edges; and

a continuous mesh liner attached to the containment flaps, wherein a surface of the mesh liner is positioned adjacent to a surface of the body side liner with no intervening layers between the mesh liner and the body side liner other than the containment flaps, and the mesh liner is permeable to sand, and the mesh liner is coextensive with the composite structure and is attached to the composite structure along the perimeter of the composite structure and unattached to the composite structure in the central region of the composite structure.

Claim 21 (Canceled)

22. The absorbent garment of Claim 20, wherein the mesh liner is permeable to liquid and substantially impermeable to bowel movement material.

23. The absorbent garment of Claim 20, wherein the mesh liner has a basis weight in a range from about 7 gsm to about 85 gsm.

24. The absorbent garment of Claim 20, wherein the mesh liner has a hole size in a range from about 147 microns to about 5810 microns.

25. The absorbent garment of Claim 20, wherein the mesh liner has a tensile strength of at least about 5 pounds of force per 4 inches of mesh liner.

26. The absorbent garment of Claim 20, wherein the mesh liner is folded.

27. An absorbent article having a waist opening and two leg openings, comprising:

a composite structure including an absorbent assembly, a liquid-permeable layer on a first side of the absorbent assembly, and a liquid-impermeable layer on a second side of the absorbent assembly, the composite structure having end edges and side edges, the end edges and the side edges defining a perimeter and a central region within the perimeter of the composite structure; and

a continuous liquid-permeable liner adjacent to the liquid-permeable layer on the first side of the absorbent assembly with no intervening layers between the liquid-permeable liner and the liquid-permeable layer, wherein the liner is permeable to sand, and the liquid-permeable liner is coextensive with the composite structure and is attached to the composite structure along the perimeter of the composite structure and unattached to the composite structure in the central region of the composite structure.

28. The absorbent article of Claim 27, wherein the liner comprises a mesh material.

29. The absorbent article of Claim 27, wherein the liner comprises a spunbond web.

30. The absorbent article of Claim 28, wherein the liner further comprises a meltblown web.

Claim 31 (Canceled)

32. The absorbent article of Claim 31, wherein the liner is attached to the liquid-permeable layer.

33. The absorbent article of Claim 31, wherein the absorbent article is a swimpant.

34. An absorbent article having a waist opening and two leg openings, comprising:

a composite structure including an absorbent assembly, a liquid-permeable layer on a first side of the absorbent assembly, and a liquid-impermeable layer on a second side of the absorbent assembly, the composite structure having end edges and side edges, the end edges and the side edges defining a perimeter and a central region within the perimeter of the composite structure;

a pair of containment flaps attached to the composite structure; and

a continuous liquid-permeable liner attached to the containment flaps, wherein a surface of the liquid-permeable liner is positioned adjacent to a surface of the liquid-permeable layer with no intervening layers between the liquid-permeable liner and the liquid-permeable layer other than the containment flaps, and the liner is permeable to sand, and the liquid-permeable liner is coextensive with the composite structure and is attached to the composite structure along the perimeter of the composite structure and unattached to the composite structure in the central region of the composite structure.

35. The absorbent article of Claim 34, wherein the containment flaps are attached to the first side of the composite structure.

36. The absorbent article of Claim 34, wherein the liner comprises a mesh material.

37. The absorbent article of Claim 34, wherein the liner comprises a spunbond web.

38. The absorbent article of Claim 37, wherein the liner further comprises a meltblown web.

Claim 39 (Canceled)

40. The absorbent article of Claim 34, wherein the absorbent article is a swimpant.

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EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None